

contained in such motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting of the motion.

* * * * *

(g) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(h) Amendments or supplements to complaints to add new claims or requests for relief are prohibited. Parties are responsible, however, for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding as required under § 1.720(g) of the rules.

12. Section 1.729 is amended to read as follows:

Section 1.729 Discovery

(a) A complainant may file with the Commission and serve on a defendant, concurrently with its complaint, a request for up to ten written interrogatories. A defendant may file with the Commission and serve on a complainant, during the period starting with the service of the complaint and ending with the service of its answer, a request for up to ten written interrogatories. A complainant may file with the Commission and serve on a defendant, within three calendar days of service of the defendant's answer, a request for up to five written interrogatories. Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. Requests for interrogatories filed and served pursuant to this procedure may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding, provided, however, that requests for interrogatories filed and served by a complainant after service of the defendant's answer shall be limited in scope to specific factual allegations made by the defendant in support of its affirmative defenses. This procedure

may not be employed for the purpose of delay, harassment or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding.

(b) Requests for interrogatories filed and served pursuant to subpart (a) of this rule shall contain a listing of the interrogatories requested and an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.

(c) A responding party shall file with the Commission and serve on the propounding party any opposition and objections to the requests for interrogatories as follows: (1) by the defendant, within ten calendar days of service of the requests for interrogatories served simultaneously with the complaint and within five calendar days of the requests for interrogatories served following service of the answer; (2) by the complainant, within five calendar days of service of the requests for interrogatories; and (3) in no event less than three calendar days prior to the initial status conference as provided for in § 1.733(a) of the rules.

(d) Commission staff will consider the requests for interrogatories, properly filed and served pursuant to subpart (a) of this section, along with any objections or oppositions thereto, properly filed and served pursuant to subpart (b) of this section, at the initial status conference, as provided for in § 1.733(a)(5) of the rules, and at that time determine the interrogatories, if any, to which parties shall respond, and set the schedule of such response.

(e) The interrogatories ordered to be answered pursuant to subpart (d) of this section are to be answered separately and fully in writing under oath or affirmation by the party served, or if such party is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. The answers shall be signed by the person making them. The answers shall be filed with the Commission and served on the propounding party.

(f) A propounding party asserting that a responding party has provided an inadequate or insufficient response to Commission-ordered discovery request may file a motion to compel within ten

days of the service of such response, or as otherwise directed by Commission staff, pursuant to the requirements of § 1.727 of the rules.

(g) The Commission may, in its discretion, require parties to provide documents to the Commission in a scanned or other electronic format that provides (1) indexing by useful identifying information about the documents; and (2) technology that allows staff to annotate the index so as to make the format an efficient means of reviewing the documents.

(h) The Commission may allow additional discovery, including, but not limited to, document production, depositions and/or additional interrogatories. In its discretion, the Commission may modify the scope, means and scheduling of discovery in light of the needs of a particular case and the requirements of applicable statutory deadlines.

13. Section 1.730 is deleted.

14. Section 1.731 is amended by revising the section heading and paragraph (a) to read as follows:

Section 1.731 Confidentiality of information produced or exchanged by the parties.

(a) Any materials generated in the course of a formal complaint proceeding may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(1) through (9). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

* * * * *

15. Section 1.732 is amended by revising paragraphs (a), (b), (c), (d), (f), and adding new paragraph (h) to read as follows:

Section 1.732 Other required written submissions.

(a) The Commission may, in its discretion, or upon a party's motion showing good cause, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(b) Unless otherwise directed by the Commission, all briefs shall include all legal and factual claims and defenses previously set forth in the complaint, answer, or any other pleading submitted in the proceeding. Claims and defenses previously made but not reflected in the briefs will be deemed abandoned. The Commission may, in its discretion, limit the scope of any briefs to certain subjects or issues. A party shall attach to its brief copies of all documents, data compilations, tangible things, and affidavits upon which such party relies or intends to rely to support the facts alleged and legal arguments made in its brief and such brief shall contain a full explanation of how each attachment is relevant to the issues and matters in dispute. All such attachments to a brief shall be documents, data compilations or tangible things, or affidavits made by persons, that were identified by any party in its information designations filed pursuant to Sections 1.721 (a)(10)(i), (10)(ii), 1.724 (f)(1), (f)(2), and 1.726 (d)(1), (d)(2). Any other supporting documentation or affidavits that is attached to a brief must be accompanied by a full explanation of the relevance of such materials and why such materials were not identified in the information designations. These briefs shall contain the proposed findings of fact and conclusions of law which the filing party is urging the Commission to adopt, with specific citation to the record, and supporting relevant authority and analysis.

(c) In cases in which discovery is not conducted, absent an order by the Commission that briefs be filed, parties may not submit briefs. If the Commission does authorize the filing of briefs in cases in which discovery is not conducted, briefs shall be filed concurrently by both the complainant and defendant at such time as designated by the Commission staff and in accordance with the provisions of this section.

(d) In cases in which discovery is conducted, briefs shall be filed concurrently by both the complainant and defendant at such time designated by the Commission staff.

* * * * *

(f) Initial briefs shall be no longer than twenty-five pages. Reply briefs shall be no longer than ten pages. Either on its own motion or upon proper motion by a party, the Commission staff may establish other page limits for briefs.

* * * * *

(h) The parties shall submit a joint statement of stipulated facts, disputed facts, and key legal issues no later than two business days prior to the initial status conference, scheduled in accordance with the provisions of section 1.733(a) of these rules.

16. Section 1.733 is amended by revising paragraphs (a), (a)(2), (a)(4), (a)(5), (a)(6), (b), (c), (d), and (e) and adding new paragraphs (f), (g), and (h) to read as follows:

Section 1.733 Status conference.

(a) In any complaint proceeding, the Commission may, in its discretion, direct the attorneys and/or the parties to appear before it for a status conference. Unless otherwise ordered by the Commission, an initial status conference shall take place, at the time and place designated by the Commission staff, within ten business days after date the answer is due to be filed. A status conference may include discussion of:

* * * * *

(2) The necessity for or desirability of additional pleadings or evidentiary submissions;

* * * * *

(4) Settlement of all or some of the matters in controversy by agreement of the parties;

(5) Whether discovery is necessary and, if so, the scope, type and schedule for such discovery;

(6) The schedule for the remainder of the case and the dates for any further status conferences; and

* * * * *

(b) Parties shall meet and confer prior to the initial status conference to discuss (1) settlement prospects; (2) discovery; (3) issues in dispute; (4) schedules for pleadings; (5) joint statement of stipulated facts, disputed facts, and key legal issues; and (6) in a 47 U.S.C. § 271(d)(6)(B) proceeding, whether the parties agree to waive the 47 U.S.C. § 271(d)(6)(B) 90-day resolution deadline. Parties shall submit a joint statement of all proposals agreed to and disputes remaining as a result of such meeting to Commission staff at least two business days prior to the scheduled initial status conference.

(c) In addition to the initial status conference referenced in paragraph (a) of this section, any party may also request that a conference be held at any time after the complaint has been filed.

(d) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a formal complaint proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials.

(e) Parties may make, upon written notice to the Commission and all attending parties at least three business days prior to the status conference, an audio recording of the Commission staff's summary of its oral rulings. Alternatively, upon agreement among all attending parties and written notice to the Commission at least three business days prior to the status conference, the parties may make an audio recording of, or use a stenographer to transcribe, the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, as well as the Commission staff's summary of its oral rulings. A complete transcript of any audio recording or stenographic transcription shall be filed with the Commission as part of the record, pursuant to the provisions of subpart (f)(2) of this section. The parties shall make all necessary

arrangements for the use of a stenographer and the cost of transcription, absent agreement to the contrary, will be shared equally by all parties that agree to make the record of the status conference.

(f) The parties in attendance, unless otherwise directed, shall either:

(1) Submit a joint proposed order memorializing the oral rulings made during the conference to the Commission by 5:30 pm, Eastern Time, on the business day following the date of the status conference, or as otherwise directed by Commission staff. In the event the parties in attendance cannot reach agreement as to the rulings that were made, the joint proposed order shall include the rulings on which the parties agree, and each party's alternative proposed rulings for those rulings on which they cannot agree. Commission staff will review and make revisions, if necessary, prior to signing and filing the submission as part of the record. The proposed order shall be submitted both as hard copy and on computer disk in accordance with the requirements of § 1.734(d) of the rules; or

(2) Pursuant to the requirements of subpart (e) of this section, submit to the Commission by 5:30 pm., Eastern Time, on the third business day following the status conference or as otherwise directed by Commission staff either:

(i) A transcript of the audio recording of the Commission staff's summary of its oral rulings;

(ii) A transcript of the audio recording of the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, and the Commission staff's summary of its oral rulings; or

(iii) A stenographic transcript of the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, and the Commission staff's summary of its oral rulings.

(g) Status conferences will be scheduled by the Commission staff at such time and place as it may designate to be conducted in person or by telephone conference call.

(h) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver by that party and will not preclude the Commission staff from conferring with those parties and/or counsel present.

17. Section 1.734 is amended by revising paragraph (c) and adding new paragraph (d) to read as follows:

Section 1.734 Specifications as to pleadings, briefs, and other documents; subscription.

* * * * *

(c) The original of all pleadings and other submissions filed by any party shall be signed by the party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, facsimile number and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed solely for purposes of delay or for any other improper purpose.

(d) All proposed orders shall be submitted both as hard copies and on computer disk formatted to be compatible with the Commission's computer system and using the Commission's current wordprocessing software. Each disk should be submitted in "read only" mode. Each disk should be clearly labelled with the party's name, proceeding, type of pleading, and date of submission. Each disk should be accompanied by a cover letter. Parties who have submitted copies of tariffs or reports with their hard copies need not include such tariffs or reports on the disk. Upon showing of good cause, the Commission may waive the requirements of this paragraph.

18. Section 1.735 is amended by revising paragraphs (b), (d) and (e) to read as follows:

Section 1.735 Copies; service; separate filings against multiple defendants.

* * * * *

(b) The complainant shall file an original copy of the complaint, accompanied by the correct fee, in accordance with Part I, subpart G (*see* 47 CFR 1.1105(1)(c)-(d)) and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;

(2) If the complaint is filed against a carrier concerning matters within the responsibility of the Common Carrier Bureau (*see* 47 C.F.R. § 0.291), serve two copies on the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau;

(3) If the complaint is filed against a wireless telecommunications carrier concerning matters within the responsibility of the Wireless Telecommunications Bureau (*see* 47 C.F.R. § 0.331), serve two copies on the Chief, Compliance and Litigation Branch, Enforcement and Consumer Information Division, Wireless Telecommunications Bureau;

(4) If the complaint is filed against a carrier concerning matters within the responsibility of the International Bureau (*see* 47 C.F.R. § 0.261), serve a copy on the Chief, Telecommunications Division, International Bureau, and serve two copies on the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau; and

(5) If a complaint is addressed against multiple defendants, pay a separate fee, in accordance with Part I, subpart G (*see* 47 CFR 1.1105(1)(c)-(d)), and file three copies of the complaint with the Office of the Commission Secretary for each additional defendant.

* * * * *

(d) The complainant shall serve the complaint by hand delivery on one of the named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of subpart (b) of this section.

(e) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by facsimile transmission to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall send, by regular U.S. mail delivery, to each defendant named in the complaint, a copy of the complaint. The Commission shall additionally send, by regular U.S. mail to all parties, a schedule detailing the date the answer will be due and the date, time and location of the initial status conference.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents or other written submissions, shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or by facsimile transmission followed by regular U.S. mail delivery, together with a proof of such service in accordance with the requirements of § 1.47(g) of the rules. Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service such as, or comparable to, the US Postal Service Express Mail, United Parcel Service or Federal Express; or

(3) Service by facsimile transmission that is fully transmitted to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by facsimile transmission that is fully transmitted to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day.

* * * * *

19. Section 1.736 is added to read as follows:

Section 1.736 Complaints filed pursuant to 47 U.S.C. § 271(d)(6)(B).

(a) Where a complaint is filed pursuant to 47 U.S.C. § 271(d)(6)(B), parties shall indicate whether they are willing to waive the ninety-day resolution deadline contained in 47 U.S.C. § 271(d)(6)(B) in the following manner:

(1) The complainant shall so indicate in both the complaint itself and in the Formal Complaint Intake Form, and the defendant shall so indicate in its answer; or

(2) The parties shall indicate their agreement to waive the ninety-day resolution deadline to the Commission staff at the initial status conference, to be held in accordance with § 1.733 of the rules.

(b) Requests for waiver of the ninety-day resolution deadline for complaints filed pursuant to 47 U.S.C. § 271(d)(6)(B) will not be entertained by the Commission staff subsequent to the initial status conference, absent a showing by the complainant and defendant that such waiver is in the public interest.

20. Section 1.1105 is amended by revising the first entry (1)(c), redesignating the second entry (1)(c) as (1)(e), redesignating (1)(d) as (1)(f), redesignating (1)(e) as (1)(g), and adding (1)(d) to read as follows:

Section 1.1105 Schedule of charges for applications and other filings in the common carrier services.

Action	FCC Form No.	amount	Fee code	Address	Payment type
1. * * *					
c. Formal Complaints and Pole Attachment Complaints, except those relating to wireless telecommunications services, Filing Fee.	Corr. & 159	150	CIZ	Federal Communications Commission, Common Carrier Enforcement, P.O. Box 358120, Pittsburgh, PA 15251-5120.	
d. Formal Complaints	Corr. & 159	150	CIZ	Federal	

relating to wireless
telecommunications
services, including cellular
telephone, paging, personal
communications services, and
other commercial mobile radio
services, Filing Fee.

Communications
Commission,
Wireless
Telecommunications
Bureau, P.O.Box
358128, Pittsburgh,
PA 15251-5120.

* * * * *

APPENDIX B

Approved by OMB

3060-XXXX
Expires XX/XX/XX
Est. Avg. Burden: 30 min.**FORMAL COMPLAINT INTAKE FORM - FCC FORM 485**

1. Case Name _____

2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable):

3. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended: _____

4. Complaint is subject to the following statutory resolution deadlines: _____

Answer (Y)es, (N)o or N/A to the following:

- _____ 5. Complaint conforms to the specifications prescribed by 47 CFR §§1.49, 1.734.
- _____ 6. Complaint complies with the pleading requirements of 47 CFR § 1.720.
- _____ 7. Complaint conforms to the format and content requirements of 47 CFR §1.721:
- _____ a. Complaint contains a complete statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.
- _____ b. Relevant documentation and/or affidavits are attached, including agreements, offers, counter-offers, denials, or other relevant documentation.
- _____ c. If damages are sought, contains specified amount and nature of damages claimed.
- _____ d. Contains certification that complainant mailed a certified letter outlining the allegations that form the basis of the complaint it anticipated filing with the Commission to the defendant carrier that invited a response within a reasonable period of time and has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.
- _____ e. Suit has been filed with the Commission, in another court, or government agency on the basis of the same cause of action or the same set of facts, in whole or in part. If yes, please explain: _____
- _____ f. Seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please

explain: _____

_____ g. Includes an information designation that contains:

_____ (1) A description by category and location, of all documents, data compilations and tangible things in the complainant's possession, custody, or control that are relevant to the facts alleged with particularity in the complaint; and

_____ (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the complaint, along with a description of the facts within any such individual's knowledge.

_____ h. Attached are copies of all documents, data compilations and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the complaint.

_____ i. Certificate of service is attached.

_____ j. Copy of payment of \$150.00 filing fee, in accordance with 47 CFR § 1.1105(1)(c), is attached.

_____ 8. If complaint is filed pursuant to 47 U.S.C. § 271(d)(6)(B), complainant requests waiver of the ninety day complaint resolution deadline.

_____ 9. All reported FCC orders relied upon have been properly cited in accordance with 47 CFR § 1.14.

_____ 10. Copy of complaint has been served on defendant's registered agent for service in accordance with 47 CFR § 1.47(b), (d), (h) and 47 CFR § 1.735(d).

_____ 11. If more than ten pages, the complaint contains a table of contents as specified in 47 CFR § 1.49(b).

_____ 12. The correct number of copies, required by 47 CFR § 1.51(c), if applicable, and 47 CFR § 1.735(b) have been filed.

_____ 13. Complaint has been properly signed and verified in accordance with 47 CFR § 1.52.

_____ 14. If complaint is by multiple complainants, it conforms with the requirements of 47 CFR § 1.723(a).

_____ 15. If complaint involves multiple grounds, it complies with the requirements of 47 CFR § 1.723(b).

_____ 16. If complaint is directed against multiple defendants, it complies with the requirements of 47 CFR § 1.735(a)-(b).

Notice: Sections 206 to 209 of the Communications Act of 1934, as amended, provide the statutory framework for rules for resolving formal complaints filed against common carriers. Section 208(a) authorizes complaints by any person "complaining of anything done or omitted to be done by any common carrier" subject to the provisions of the Act. Complainant must submit a completed FCC form 485 with any formal complaint to indicate that the complaint satisfies the procedural and substantive requirements under the Act and our rules. The information will be used to determine the sufficiency of the complaint and to resolve the merits of the dispute between the parties. We have estimated that each response to this collection of information will take, on average, 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERF, Paperwork Reduction Project (3060-0411), Washington, D.C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. PLEASE DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

Remember -- You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-XXXX).

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1994, 5 U.S.C. 552a(E)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

APPENDIX C

LIST OF COMMENTERS (CC DOCKET NO. 96-238)

American Public Communications Council
America's Carriers Telecommunications Association
Ameritech
Association of Telemessaging Services International
AT&T
Bechtel & Cole, Chartered
Bell Atlantic
BellSouth
Cincinnati Bell Telephone Company
Communications and Energy Dispute Resolution Associates
Communications Venture Services, Inc. and Richard C. Bartel
Competitive Telecommunications Association
GST Telecom, Inc.
GTE
ICG Telecom Group
KMC Telecom Group
MCI
MFS Communications Company
Nextlink Communications LLC
NYNEX
Pacific Telesis Group
Southwestern Bell
Sprint
Teleport Communications Group
Telecommunications Resellers Association
United States Telephone Association
U S West

APPENDIX D

LIST OF REPLY COMMENTERS (CC DOCKET NO. 96-238)

Ameritech
AT&T
Bechtel & Cole, Chartered
BellSouth
Cincinnati Bell Telephone Company
GTE
ICG Telecom Group
Joint Reply: Bell Atlantic and NYNEX
Joint Reply: Jones Intercable, Inc., Centennial Cellular Corp., Texas Cable and Telecommunications Association, Cable Television Association of Georgia, South Carolina Cable Television Association, Tennessee Cable Telecommunications Association
MCI
National Association of the Deaf
Pacific Telesis Group
Southwestern Bell
Sprint
Telecommunications Resellers Association
United States Telephone Association